

**Letter of Findings: 04-20181178
Gross Retail Tax
For the Years 2014 and 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Service Station failed to meet its statutory burden of establishing that the Department's assessment of additional sales tax was wrong; while Service Station provided records purporting to correct errors and omissions embedded in the financial records originally presented to the Department's audit, Service Station failed to provide documentation which would have allowed for a specific adjustment to the assessment.

ISSUE

I. Gross Retail Tax - Calculation.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department overstated the amount of fuel and other sales which occurred at its automobile service station.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation which operates an automobile service station. Taxpayer provides its customers two metered fuel pumps which dispense fuel 24 hours each day. Each of the pumps dispenses regular unleaded gasoline and diesel fuel.

The service station also features three vehicle service bays which make it possible to provide automotive maintenance and repair services. Taxpayer also sells prepackaged snacks and soft drinks.

Taxpayer is registered for Indiana sales, withholding, tire tax, and corporate income tax. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records including sales tax returns, service invoices, and register tapes. According to the Department's audit report, Taxpayer reported its monthly sales and sales tax due on form Indiana ST-103MP ("Indiana Metered Pump Sales and Use Tax Return").

The Department found "discrepancies between [Taxpayer's] reported sales and the records maintained by [T]axpayer." In completing the ST-103MP forms, "Rather than including the sum of all taxable and non-taxable sales in the total sales in the calculation of the line one amount on the ST-103MP form, [T]axpayer only reported the sum of its taxable sales."

[T]axpayer did not keep a full record of its taxable sales calculations that it used to enter the amounts of line one of its ST-103MP forms. Additionally, the amounts for taxable sales on the available daily register tapes did not fully reconcile to the ST-103MP line one amounts. The [T]axpayer's misreported line one amount on its ST-103MP resulted in additional errors on its ST-103MP form, specifically, the understatement of taxable sales.

According to the audit report, Taxpayer's representative admitted that errors were made on the ST-103MP forms and also agreed that "[T]axpayer also misreported the sales tax due because it did not remit all of the sales tax it had collected during the audit period."

In the face of what it determined were basic reporting errors, the Department's audit relied on Taxpayer's "sales

totalizer." The audit report explains that the "sales totalizer" is the line item calculation found on Taxpayer's cash register tapes ("z-tapes"). The audit concluded that these totals "[were] the most reliable method for tracking the [T]axpayer's total revenue during the sample period."

The audit resulted in an assessment of additional sales and corporate income tax.

Taxpayer disagreed with both the sales and income tax assessments and submitted a protest to that effect. This Letter of Findings addresses the assessment of additional sales tax.

An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Gross Retail Tax - Calculation.

DISCUSSION

Taxpayer states that the Department's audit overstated the amount of sales which occurred at its business location.

As with any assessment of tax, it is Taxpayer's responsibility to establish that the sales tax assessment was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." See also *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana sales tax is imposed pursuant to IC § 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

A retail merchant - such as Taxpayer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes" IC § 6-2.5-9-3.

Taxpayer points to two errors or omissions which resulted in the Department overstating its taxable sales.

A. Fuel Sales.

Taxpayer states that it originally misreported the amount of its fuel sales. Taxpayer explains that it inflated the amount of fuel sales on the ST-103MP forms because its fuel pumps recorded and reported the undifferentiated cost of fuel and the sales tax associated with each sale. For example, the fuel pump system reported \$100 in total sales but that this amount actually includes both \$7 in sales tax and \$93 in fuel charges. Taxpayer states that it should have reported only the \$93 on the ST-103MP but that it erroneously reported \$100 in taxable sales.

Taxpayer provided a worksheet which purports to reconcile this difference and - in effect - reduce the amount of the sales tax now due by approximately \$9,000.

B. Cash Discounts.

Taxpayer states that the assessment failed to account for "discounts" allowed for customers who paid cash for their fuel sales. Taxpayer explains that it allowed certain of its customers a previously unrecorded discount for two of its customers who paid cash when they purchased fuel. Taxpayer explains that these particular sales are recorded on its "QuickBooks" records but that the gross fuel sale - with the discount - is reported on its fuel pump sales.

Taxpayer's representative explains:

The gross fuel sale is recorded when the fuel goes through the pump, but [Taxpayer's representative] do not

receive the [QuickBooks] as part of [Taxpayer's] monthly compilation as [T]axpayer did not know how to send . . . this data, so these discounts were not recorded on the [T]axpayer's financials or tax return[s].

Taxpayer provided a worksheet which purports to reconcile the originally reported sales with information derived from Taxpayer's QuickBooks records. As best as can be determined, this reconciliation reduces Taxpayer's total fuel sales by approximately \$8,200.

Taxpayer points to certain other discrepancies in its own record-keeping and reporting systems but these errors are irrelevant to the sales tax assessment here at issue. The income tax assessment is addressed in a separate decision designated as Letter of Findings 02-20181179.

C. Conclusion.

Taxpayer's three-page spreadsheet sets out the sales adjustments Taxpayer now seeks. However, the Department is unable to agree that the spreadsheet, written explanations, and, financial statements are sufficient to meet Taxpayer's statutory burden of establishing that the assessment was *wrong*. IC § 6-8.1-5-1(c). Although Taxpayer provided financial records purporting to correct the multiple errors and omissions embedded in the records originally reviewed, there are no verifiable source documents which allow for a specific adjustment of the original income tax assessment as required under IC § 6-8.1-5-4(a).

FINDING

Taxpayer's protest is respectfully denied.

May 17, 2018

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